



A REPORT
TO THE
MONTANA
LEGISLATURE

PERFORMANCE AUDIT

Contract Management

Department of Corrections

FEBRUARY 2010

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DIVISION

09P-08

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We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Members of the performance audit staff hold degrees in disciplines appropriate to the audit process. Areas of expertise include business and public administration, journalism, accounting, economics, sociology, finance, political science, english, anthropology, computer science, education, international relations/security, and chemistry.

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February 2010

The Legislative Audit Committee
of the Montana State Legislature:

This is our performance audit of Contract Management at the Department of Corrections. This report includes information on the procurement and monitoring of contracts at the department and also addresses organizational controls. Our recommendations include taking action to comply with procurement laws, developing agency policies and procedures to improve transparency and documentation, and elevating the importance of contract management functions within the department. A written response from the Department of Corrections is included at the end of the report.

We wish to express our appreciation to department personnel for their professional and courteous cooperation and assistance.

Respectfully submitted,

/s/ Tori Hunthausen

Tori Hunthausen, CPA
Legislative Auditor

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APPOINTED AND ADMINISTRATIVE OFFICIALS

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Diana Koch, Legal Counsel

Administrative and Financial Services Division

Rhonda Schaffer, Administrator

Gary Willems, Chief, Contract Management Bureau

Adult Community Corrections Division

Pam Bunke, Administrator

Montana State Prison

Mike Mahoney, Warden

Patrick Smith, Chief, Contract Placement Bureau

Montana Women's Prison

Jo Acton, Warden

Health, Planning and Information Services Division

Gary Hamel, Administrator

Human Resources

Steve Barry, Administrator

Youth Services Division

Steve Gibson, Administrator

Montana Correctional Enterprises

Gayle Lambert, Administrator

REPORT SUMMARY

Department of Corrections Contract Management

Contracted services compose over 40 percent of the Department of Corrections' total budget; however, the department has not developed adequate controls over contract procurement and monitoring of contractor performance nor does its organizational structure properly emphasize the importance of contract management.

Audit Findings

During the 1990s the Montana Legislature enacted legislation allowing the state to contract with private corporations, local governments, and tribal governments to operate correctional facilities. Since then, the Department of Corrections has entered into contracts for a private prison, regional prisons, prerelease centers, and specialized treatment and sanction facilities. As a result, the dollar value of contracts managed by the department has increased significantly. By fiscal year 2009, contracted facilities cost the state approximately \$54 million, which is nearly as much as the costs of operation of state-owned correctional facilities. In addition to the facility contracts, the department also managed over \$19 million in other contracts during fiscal year 2009. Together, there are over 230 department contracts which compose over 40 percent of the department's overall budget.

Our audit sought to determine if the department has internal controls in place to ensure efficient and effective contract management and if the department's organizational structure promotes effective contract management. To do this we reviewed procurement files, evaluated the processes used to monitor contracts, and evaluated how the department's structure impacts contract management. Despite the significant investment in contracts, the department has not developed adequate controls and is not structured in a manner which emphasizes the importance of contract management.

Audit Recommendations

Audit work identified three primary areas in which contract management improvements are needed—procuring of contracted facilities, monitoring contractor performance, and emphasizing contract management through organizational changes. Recommendations address the need to:

- ♦ Ensure fair and equitable treatment of all vendors in procurement processes by complying with state procurement laws
- ♦ Ensure all contracts are set forth in writing
- ♦ Develop a policy regarding procurement evaluation committee composition

- ♦ Amend administrative rules to clarify the prerelease siting process
- ♦ Update contract monitoring tools and policies to ensure all contracts are adequately monitored
- ♦ Emphasize the importance of contract management through changes to the department's organizational structure.

Chapter I – Introduction

Introduction

In November 2008, the Legislative Audit Division presented its financial-compliance audit report to the Legislative Audit Committee for the two fiscal years ended 2008. This report presented an issue related to the Department of Corrections (department) contract administration. Specifically, the report noted concerns regarding contract payments and several instances where payments were not made in accordance with the terms of the contract. Contract administration has been an ongoing issue for the department with concerns periodically brought forth during financial-compliance and performance audits dating back to 2000. As a result, the Legislative Audit Committee requested a performance audit of the department's contract management practices. This performance audit examines the department's contract management from a system-wide point of view with emphasis on analyzing existing internal controls.

Audit Objectives

The objectives of this performance audit were to determine if:

- ♦ The Department of Corrections has internal controls in place to ensure efficient and effective contract management
- ♦ The organizational structure of the Department of Corrections promotes effective contract management

Audit Scope and Methodologies

We considered contract management as a two-stage process. The first stage is procurement, which includes activities associated with identifying a need for a contract, using a process to obtain the needed item, conducting the procurement, and finally, issuing a contract and acquiring the item. The second stage is contract monitoring, which includes a variety of steps taken to ensure the department receives what the contractor has promised to deliver under the terms of the contract. This audit reviewed the department's activities in both stages of the contracting process.

We reviewed two types of contracting activities at the department—those for correctional facilities or programs and those for miscellaneous services, such as chemical dependency counseling or mental health services. Throughout this report we use the terms facility and program interchangeably. The bulk of the department's contracts (in terms of total contract value) are related to correctional facilities, so much of our review focused on how these contracts are managed. Since new correctional facility contracts are long-term contracts, we generally reviewed procurement and

contracting activities for these facilities dating back to 2005. For the department's miscellaneous contracted services we reviewed contracts for 2008 and 2009. Many of these contracted services are for medical service providers, which are exempt from the requirements of the Montana Procurement Act (Title 18, Chapter 4). Therefore, much of our audit work for these contracts evaluated how the department monitors service delivery of these contracts. To respond to the audit objective, we:

- ♦ Reviewed applicable statutes, administrative rules, and policies and procedures to determine what guidance is available to the department and what steps are required.
- ♦ Reviewed previous Legislative Audit Division audit reports and contract reviews.
- ♦ Obtained criteria for contract management and accountability measures from other Montana state government agencies, other states, the federal government, and professional organizations.
- ♦ Interviewed department staff regarding contract management activities and observed interactions with contractors.
- ♦ Interviewed individuals from organizations that provide contracted services to the department.
- ♦ Examined department procurement file documentation related to type of bidding process used, type of services requested, and evaluation criteria used to score responses.
- ♦ Reviewed contract file documentation related to bids or quotes obtained from vendors, evaluation of contractor performance, contract renewals, and communication with vendors.
- ♦ Reviewed department records and interviewed department management and staff to evaluate the extent of the department's contract monitoring used to verify delivery of contracted services.
- ♦ Reviewed department staff position descriptions and performance evaluations to determine the degree to which contract management is emphasized.

Report Contents

This report is organized into five chapters. Chapter II provides background information about the department and the contracting process. Chapter III discusses needed improvements within the department's process to procure and contract for services. Chapter IV provides recommendations to improve the department's contract monitoring activities once a contract is issued. Chapter V discusses improving the department's organizational structure for contract management.

Chapter II – Background

Introduction

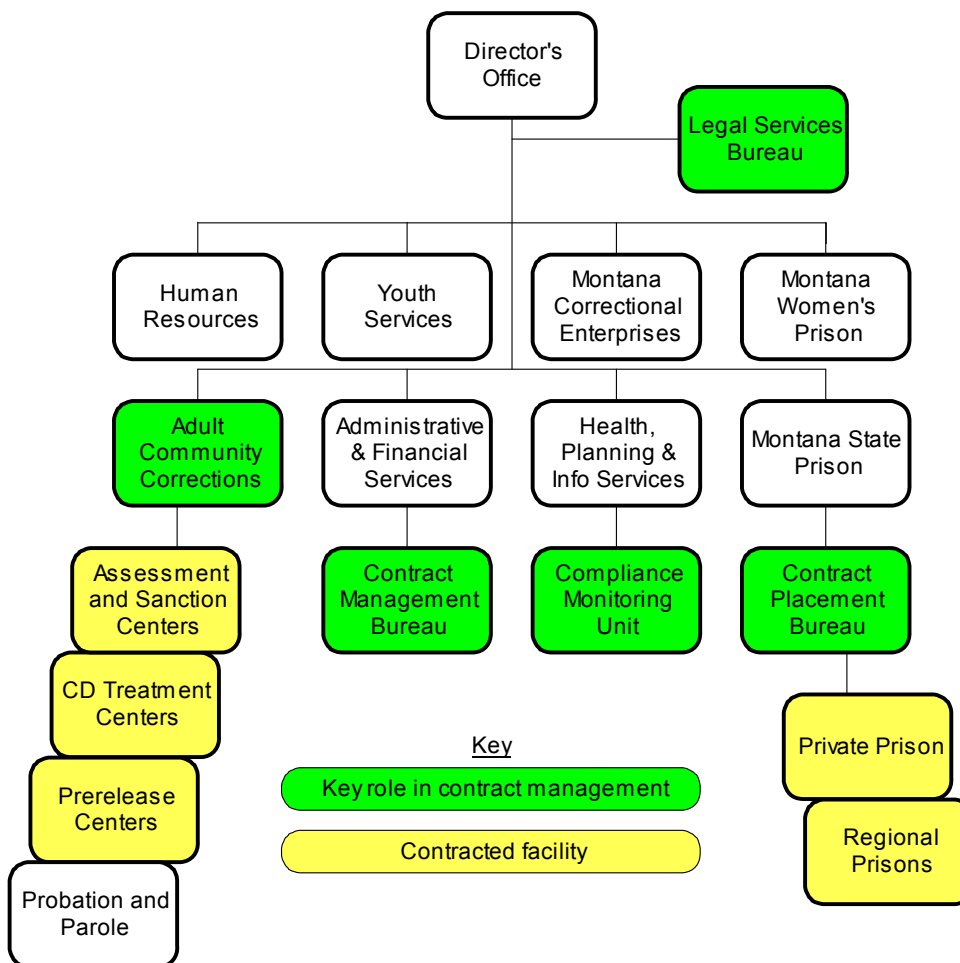
Many states, including Montana, have increasingly turned to private correctional facilities to house growing inmate populations. For approximately 30 years the Montana Department of Corrections (department) has worked with Montana organizations to provide some correctional services. During the 1990s, the Montana legislature enacted legislation allowing the state to contract with private corporations, local governments, and tribal governments for correctional facilities. Since then, the department entered into contracts for a private prison, regional prisons (operated by county governments), prerelease centers, and specialized treatment and sanction facilities. As a result, the dollar value of contracts managed by the department has increased significantly. By fiscal year 2009, department records indicate it had \$54.5 million in facility contracts.

The department also manages a significant amount of other contracts. In fiscal year 2009 there were \$19.7 million nonfacility-related contracts. These contracts include a wide variety of other goods and services, ranging from property leases to medical service providers. The total expenditures on contracted goods and services was \$74.2 million in fiscal year 2009.

Department Contract Management Organizational Structure

Management of the department's contracts is spread throughout the agency. Any division may have need of a contract. Staff members in each division validate the need for the contract and a division employee is assigned to manage the contract and provide day-to-day contact with the vendor. Several areas within the department play specialized roles at some point during the contracting process. Figure 1 depicts the organizational structure of the department. Divisions or bureaus which play a key role in the contracting process are highlighted in green. Contracted facilities are highlighted in yellow.

Figure 1
Department of Corrections Organizational Chart



Source: Compiled by the Legislative Audit Division.

Legal Services Bureau

Within the director's office is the Legal Services Bureau. Staff members in this bureau are responsible for reviewing and approving the legal content for contracts or substantive contract amendments prior to execution.

Administrative and Financial Services Division

Primary responsibility for managing the department's contracting authority falls to the Contracts Management Bureau (CMB) within the Administrative and Financial Services Division. The CMB assists in ensuring compliance with statutes and other regulations by coordinating the procurement process and establishing procedures for

issuing contracts based on the total value of each contract. All requests for contracts over \$5,000 in value are to follow a routing process designed to obtain approvals from legal staff, budget analysts and the division administrator or warden. The CMB collects license and insurance information from the vendor and routes the contract for required signatures. Once all required signatures are provided, the CMB enters the contract into a centralized contracts spreadsheet and posts a copy of the contract on the department web site.

Compliance Monitoring Unit

The Compliance Monitoring Unit (CMU) is part of the Health, Planning and Information Services Division. Per department policy, the CMU is meant to conduct compliance reviews of all department-managed and contract facilities at least once every three years. Facility audits are designed to measure compliance with policies and contract terms.

Contract Placement Bureau

Part of the Montana State Prison, the Contract Placement Bureau monitors contracts for private and regional prisons.

Adult Community Corrections Division

The Adult Community Corrections Division (ACCD) is the largest user of contracted services within the department. During fiscal year 2008, more than 80 percent of offenders supervised by the department were supervised by ACCD. To accomplish this task, ACCD relies on its probation and parole officers and a network of contracted treatment, sanction, and prerelease facilities. ACCD staff members manage the facility contracts and other contracts in support of community corrections activities such as property leases for regional offices and offender counseling services.

Contract Liaisons

Contract liaisons serve as the primary contact for contractors, oversee provision of services by the contractor, participate in negotiation of contract terms and compensation, approve contractor payments, and ensure compliance with the contract terms. The contract liaison is normally an employee who has routine contact with the vendor. For example, the regional probation and parole administrator will be the assigned contract liaison for chemical dependency, mental health, or enhanced supervision contracts associated with offender support within the region. The regional administrator will also be responsible for any property leases associated with probation and parole activities within the region. Contract liaisons have job duties in addition to those associated with contracts. Occasionally, a liaison will delegate some duties to a subordinate. For example, a regional administrator located at a regional headquarters

office may retain ultimate responsibility for all regional satellite office leases but ask an employee on location to handle day-to-day contact duties for service calls. According to department records, there are 68 departmental personnel authorized as contract liaisons.

Facilities

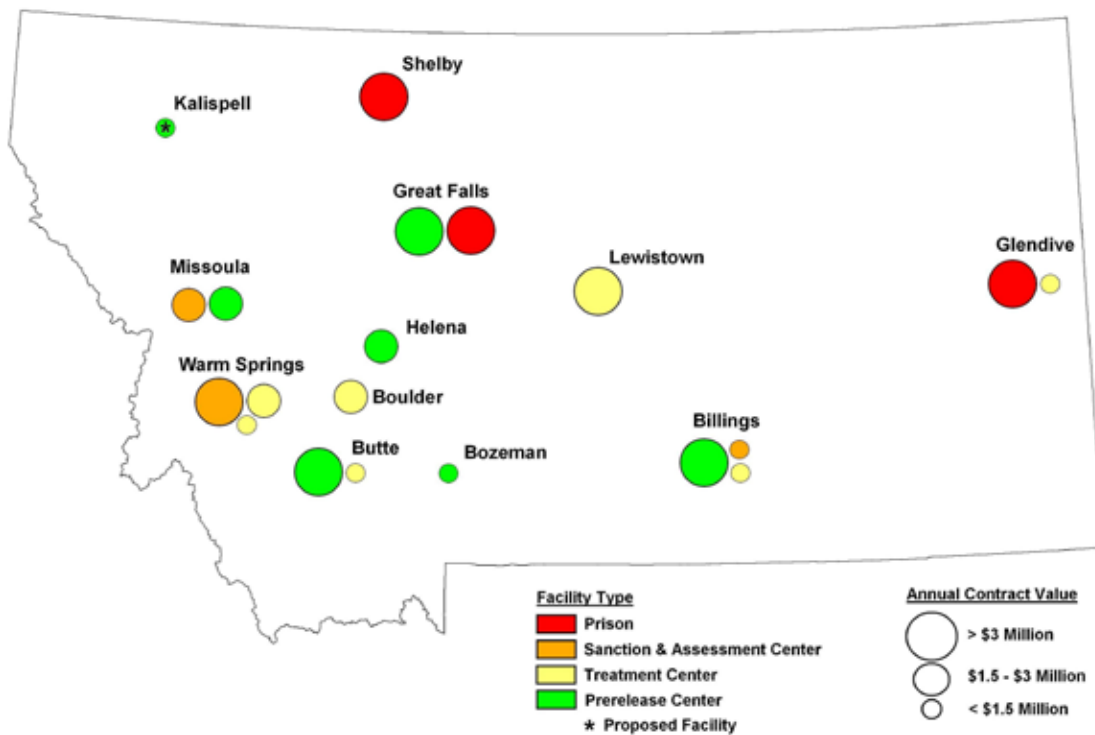
There are six state-owned correctional facilities in Montana including prisons and youth facilities. According to the department's 2009 biennial report, the annual cost to operate these facilities was about \$59 million.

During fiscal year 2009, the department contracted with nonprofit corporations (governed by local boards of directors) or local governments for 19 facilities in addition to the state-owned facilities. According to department records, the annual cost of the contracts for these facilities is over \$54 million. Contracted facilities are divided into four general classifications:

- ♦ Regional and private prisons—long-term incarceration, primarily for minimum- and medium-security inmates
- ♦ Assessment and sanction centers—short-term sanction of offenders and assessment prior to assignment elsewhere
- ♦ Treatment centers—secure facilities with specialized chemical dependency treatment programs
- ♦ Prerelease centers (PRC)—residential facilities that allow offenders to reintegrate into free society

The location of each contracted facility is shown in Figure 2, along with the total annual contract value for that facility.

Figure 2
Department of Corrections Contracted Facilities



Source: Compiled by the Legislative Audit Division from department records.

Guidance for Contracting Activities

Department contracting is governed by a number of statutes, administrative rules, internal policy statements, procedural guides, and manuals. Procurement and ongoing management of some types of facilities are addressed explicitly in some sections of law. Two areas within Montana law govern the department's procurement of goods and services: Title 18, Chapter 4 (Montana Procurement Act) and Title 53, Chapters 1 and 30 (General Administration of Institutions, Corrections).

Title 18, Chapter 4, the Montana Procurement Act

The Montana Procurement Act defines the procurement process and provides general guidance to all state agencies that engage in contracting. Among the purposes of the act are to provide for increased public confidence in procurement, ensure the fair and equitable treatment of all persons involved, and foster effective, broad-based competition within the free enterprise system.

The Montana Procurement Act allows the Department of Administration to delegate purchasing authority to individual agencies. In the case of the Department of Corrections, it has been delegated authority to conduct procurement for items up to \$25,000. The delegation of authority agreement also specifies that the department may procure services irrespective of dollar value for private correctional facilities, which includes prerelease centers, treatment centers, regional and private prisons. Nonfacility contracts would generally be covered by the Montana Procurement Act, though many of the services used by the department are exempt from its requirements. Because of the unique needs of the department, the legislature has provided additional guidance regarding procurement to the department in Title 53, MCA, related to correctional facilities.

Title 53, Chapters 1 and 30, General Administration of Institutions, Corrections

Title 53, MCA, addresses social services and institutions. Chapter 1 authorizes the department to establish youth and community corrections facilities and programs in addition to contracting with other governments and private entities for correctional facilities. Sections 53-1-202 and 53-30-101, MCA, enumerate the types of facilities that may hold adult offenders, including private and regional prisons and community-based programs, such as prerelease centers or other appropriate programs.

Section 53-1-203, MCA, grants the department power to create rules related to the siting of prerelease centers and instructs the department that it shall contract with private Montana nonprofit corporations for prerelease and methamphetamine (meth) treatment centers. This same law grants the department the power to contract for sex offender treatment facilities and enables contracts for PRCs, meth treatment, or sex offender treatment to exceed the traditional seven year maximum contract time limit—extending them to a maximum of 20 years. In another section of law (§§53-30-511 and 53-30-608, MCA), contracts for regional and private prisons may not exceed 30 years.

For certain types of contracts, Legislative Audit Committee review may be conducted prior to execution. For private prisons (§53-30-608, MCA), the Legislative Audit Division (LAD) may review the procurement procedures and determine if the contract meets statutory requirements. For PRCs, meth and sex offender treatment centers or other contracts exceeding 20 years in length (§53-1-203(3), MCA), the department must submit the contract to LAD, which will provide recommendations or comments to the Legislative Audit Committee.

Recent Improvements in Controls Over Contract Management

In response to LAD financial-compliance audit recommendations issued in November 2008, the department recently added tools to assist contract liaisons in their monitoring duties. These include:

- ♦ A quarterly report that can identify issues for improving the contract, identify issues with contractor performance, and summarize contract expenditures.
- ♦ A contract cost tracking spreadsheet that allows the contract liaison to enter monthly invoice information and then compare that information with the anticipated maximum contract cost.
- ♦ A brief online training presentation that defines contract terms, identifies where critical information is located within the contract, and outlines expectations the department has for contract liaisons. Before this training was developed, the department did not have a specific training program for contract liaisons.
- ♦ An additional staff member was added to the Contract Management Bureau.

These are steps in the right direction but improvements to the department's contracting process are still needed. These are discussed in detail in Chapters III-V.

Chapter III – Facility Contract Procurement

Introduction

The Department of Corrections (department) contracts for a wide variety of goods and services. All contracted services are acquired through a method of procurement. In department policy (Policy 1.2.8) the department defines procurement as:

Acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It includes all functions that pertain to obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Since contracting for government services often involves substantial sums of money, safeguards for the maintenance of a procurement system to ensure quality and integrity are important. Contract procurement is an area subject to vendor protests and litigation and as a result it is an area of risk. Because of this, it is critical that agencies have a strong system of controls to ensure procurement of services that:

- ♦ Adheres to state law, administrative rule and internal policies
- ♦ Is well documented
- ♦ Is legally defensible
- ♦ Fosters effective, broad-based competition within the free enterprise system
- ♦ Provides increased economy in state procurement activities and maximizes the purchasing value of state funds
- ♦ Is conducted in a manner that ensures fair and equitable treatment of all persons that deal with the procurement system.

This chapter discusses improvements the department can make to strengthen its processes and procedures for procuring contracted services.

Improving Contract Procurement Practices

Our review of the department's contracts procurement process noted inconsistencies in the application of procurement laws, lack of clarity in administrative rules for siting prerelease centers (PRC), inadequate documentation, questionable use of Request for Proposal (RFP) evaluation criteria, inconsistent treatment of vendors, and a practice of procuring vendor services without written contracts. Our audit noted several areas where the department should make changes to improve the procurement aspects of contracts management. These areas include:

- ♦ Complying with existing state law when procuring contracted correctional facilities

- ♦ Amending administrative rules relating to the physical siting of prerelease centers
- ♦ Developing and following policy to ensure fair and equitable treatment of all vendors
- ♦ Developing policy to address selection and composition of RFP evaluation committee members and specify documentation to be maintained for the RFP process to support scoring decisions
- ♦ Developing controls to ensure compliance with the Montana Procurement Act (Title 18, MCA) regarding competitive proposals and executing written contracts for services

The remainder of this chapter discusses these issues and presents our recommendations for improvement.

Competitive Processes Not Always Used in Facility Procurement

Title 53, MCA provides the department the authority to contract for many different types of services, including:

- ♦ Community correctional facilities
- ♦ Prerelease centers
- ♦ Methamphetamine (meth) treatment facilities
- ♦ Sex offender treatment facilities
- ♦ Regional prisons
- ♦ Private prisons

In some cases, such as for meth treatment facilities (§53-1-203, MCA) and private prisons (§53-30-605, MCA), statute instructs the department that an RFP process must be used. An RFP is an invitation to vendors to submit a detailed proposal regarding how and at what cost a vendor can meet a specific need identified by the state.

For prerelease centers and community correctional facilities, Title 53, MCA is silent on the method of procurement. In these cases, Title 18 (the Montana Procurement Act) would therefore apply. Facilities obtained under the Montana Procurement Act should generally be procured through a competitive bid process.

Audit work revealed four facilities that have begun operations since 2005 and were obtained without the benefit of a competitive procurement process. These include:

- ♦ A DUI treatment center was opened as an expansion of an existing treatment

center contract rather than as a new facility. The new location was more than 450 miles away from the pre-existing location and charges a different rate per offender.

- ◆ An assessment and sanction center was obtained by expanding an existing prerelease center's scope of services. The assessment and sanction center is located in the same building as the PRC but provides a different set of services. The department pays a different rate per offender housed there and the department and vendor recognize it as a unique program.
- ◆ A drug and alcohol treatment center was obtained by expanding an existing prerelease center's scope of services. The drug and alcohol treatment center is also located in the same building as the PRC, but again the department pays a different rate, the program provides specialized treatment programs, and is identified by the department and vendor as a unique program.
- ◆ A prerelease center was opened in which the department contracts with a county government, rather than a Montana nonprofit corporation, which is required by law (§53-1-203, MCA). The county government subcontracts with a private nonprofit corporation to operate the center. This PRC was opened without the benefit of state procurement procedures.

Together, the cost of these services during fiscal year 2009 was approximately \$4.5 million and none were acquired through a competitive procurement process. Because they were obtained without competition and the safeguards designed for state procurement, it is unknown whether the stated purposes of the Montana Procurement Act were achieved. These include:

- ◆ Public confidence in procurement
- ◆ Fair and equitable treatment of all involved with procurement
- ◆ Maximizing the purchasing value of state funds
- ◆ Effective, broad-based competition within the free enterprise system

The department has contracted to open these expanded facilities because it believes they are simply expansions of existing services. State law does not define what constitutes an expansion of services, however, the services constitute new facilities for which a competitive procurement should have been completed. The facilities in question are either located in different geographic areas, charge different rates per offender, provide different services, or are defined in department information as different facility types. Under these conditions, the services constitute a new facility and therefore should be obtained through the procurement processes set forth in state law.

RECOMMENDATION #1

We recommend the Department of Corrections comply with state law when entering into contracts for new facilities by:

- A. *Contracting with Montana nonprofit corporations for prerelease centers as required in §53-1-203, MCA.*
 - B. *Procuring all facilities according to the provisions of the Montana Procurement Act when Title 53, MCA is silent.*
-

Prerelease Center Procurement

The location of prerelease centers within a community is often a contentious issue—over the years two PRC projects have been delayed because of siting concerns. Siting is the selection of a specific geographic area where a PRC facility is to be located and is a very important step in the procurement process for any correctional facility, but particularly for PRCs. At a PRC, offenders are able to leave the facility for employment and are beginning to transition from incarceration to life in the community. Offenders need ready access to employment opportunities but area residents may be concerned with having a concentrated number of offenders living in a specific area.

The 1997 Legislature passed House Bill 125 (§53-1-203, MCA), which authorizes the department to adopt rules for siting PRCs and specifies that “a prerelease center may not be sited at any location without community support.” Administrative Rules of Montana (ARMs 20.7.501-511) require certain steps be taken by the department, such as:

- ◆ The department documents the need for a center in the area
- ◆ The department contacts local officials to determine support for a facility
- ◆ Local media members are notified of the process to consider a PRC
- ◆ A working committee of concerned local residents must be formed to determine general support for and to approve a specific geographic area of the city, town, or county for the center
- ◆ The department contracts to conduct a survey of the local officials and general public to determine support for the facility.

When conducting the procurement for one PRC project, the department issued the RFP for the facility prior to verifying community support for a specific geographic location for the facility. Following the RFP process, the location proposed was not supported by local residents. As a result, the department and the vendor are seeking local approval for a new site.

Having to complete the local approval steps at this late stage has delayed the process for opening the proposed PRC. The original projected opening date of the facility was spring 2009. The project is now at least a year behind schedule. It is also unclear what will happen once a new location is approved. If the new location causes the proposal to become significantly more expensive it may require the department to reopen the entire procurement process lest it face legal action from one or more of the involved vendors. It is also possible that the selected vendor may file a grievance if it must go through a new RFP process. Vendors report that it costs \$50,000 or more to develop a competitive proposal for a prerelease RFP, so the vendors have a significant concern over potential problems with the process.

According to department legal staff members, the existing administrative rules are clear regarding what steps must be taken by the department during the siting and procurement processes but the order in which each required step is to be completed is not clear. This lack of clarity has allowed the department to issue an RFP prior to verifying local support for the facility causing the resulting delay in facility opening and may subject the department to protests or legal challenges to the procurement. Clarifying the order in which steps are to be taken may help the department avoid issues during future PRC procurement efforts.

RECOMMENDATION #2

We recommend the Department of Corrections amend ARM 20.7.501-511 to clarify the order in which prerelease center site approval and procurement steps are to be completed.

RFP Decision Making and Documentation

An RFP provides a means for a state agency to judge a vendor's qualifications, experience, and approach to determine the best solution to the state's needs. The department generally uses an RFP process to select service providers to operate facilities such as prerelease centers and chemical dependency treatment centers.

We reviewed RFP files for two of the department's contracted prerelease centers and four treatment centers. We reviewed files which contained documentation that was unrelated to the RFP or was not needed to make a contract award decision. For example, some RFP files contained documentation for other procurement processes, department employee training certificates, and inmate treatment notes from department treatment programs unrelated to the contract. We also noted the department was not

always consistent in the types of documentation maintained from one RFP process to another. Procurement files for both PRCs and treatment centers often lacked important information, such as a meaningful explanation regarding how RFP scoring was completed, documentation supporting significant decisions or changes made during the RFP process, and scoring summaries sometimes lacking enough detail to determine why a particular score was given for a category. For example, when scoring PRC proposals, vendor references were one of the evaluation criteria. Each of the four vendors received the maximum of 50 points for the category with the following four comments:

- ♦ “Good references”
- ♦ “Met requirements”
- ♦ “19 reference sheets”
- ♦ “Scores from 3 to 5”

The seemingly diverse comments did not provide sufficient detail for an observer to determine why the given scores were appropriate. This range of comments leads an observer to question why each of the responses earned the maximum amount of points.

Scoring Criteria Should Consider Range of Possible Responses

Scoring criteria for RFPs need to be made clear to all potential vendors at the time an RFP is issued so that vendors can clearly understand the expectations of the agency. In the case of the RFP for a meth treatment center, vendors had the option of submitting a proposal for a male-only facility, a female-only facility, or a combined facility. The department issued the RFP with standard cost scoring criteria—that is, the highest scoring proposal would receive full points for the cost portion and the others would receive a correlated percentage of the maximum.

As it turned out, the highest scoring proposal was for a female-only facility so the award was made to this vendor. But, the department also required male beds for meth treatment. There was only one proposal for male-only beds so that vendor was also offered the opportunity—even though this proposal was the third-highest scoring and well behind the second-best proposal which was for a coed facility. The standard scoring criteria developed for this RFP did not sufficiently consider the different facility options.

The combined male and female facility scored only three points (out of a possible 2000 total points) lower than the female-only facility but the department did not include a mechanism to evaluate each of the possible different response scenarios and we were

unable to find documentation clearly explaining how the winning combination was determined. The single facility would have been approximately \$800,000 less expensive during the first fiscal year, with commensurate savings in future years.

Contracted Facility Located on Former Department Property

One of the contracted meth treatment centers is located on property that was once owned by the department. The department transferred this land to a county government, which now leases the land to the contractor operating the meth treatment center. The land was transferred free of charge to the county by the Board of Land Commissioners, which deemed the transfer necessary to meet a public purpose—and was made with the specific provision that it be used for a meth treatment center. This type of transfer is authorized by §77-2-351, MCA; however, the department did not make all vendors aware of the land's availability by including information about it in the RFP document or through other means.

The department does allow vendors to use agency property for other contracted facilities and could have also done so in this case. For example, the department contracts for two DUI treatment centers—both are provided in facilities that are owned by the department. The availability of these properties was not made known to all vendors through the RFP document. If the department desired to have the property used by a vendor, it should have made all potential vendors aware of its availability. The Montana Procurement Act (§18-4-122(5), MCA) has, among its stated purposes, to “ensure the fair and equitable treatment of all persons who deal with the procurement system of the state.”

We reviewed county records, including a resolution passed by county commissioners in support of the land transfer, and noted only a single vendor is named as a potential contractor for the facility. Interviews with other vendors indicated that they were unaware that the department wished to make this land available to host a meth treatment facility. The failure to notify all vendors of its availability resulted in unequal treatment of vendors.

The decision to transfer the land now costs the department approximately \$20,000 annually. Based on county records, the vendor has agreed to lease the land from the county for \$100 per month plus 1 percent of facility revenues. In fiscal year 2009 the maximum contract value paid by the department for this facility was \$1.825 million. We were unable to determine why the department made the decision to grant the land to a county or why only one vendor was aware that the land was available. The department did not provide documentation containing rationale as to why this

occurred. As a result, all vendors did not receive fair and equitable treatment from the department. In order to demonstrate compliance with the Montana Procurement Act, the department should maintain documentation of significant decision points in procurement processes.

Procurement Activities Should be Documented

Our review of state law and state policy noted expectations that state government procurement activities be well documented. For example, §18-4-304, MCA, requires that RFPs state the evaluation criteria used and the criteria's relative importance, make awards to the responsible and responsive vendor whose proposal best meets the evaluation criteria, and that contract files demonstrate the basis on which the award is made. Additionally, state policy (MOM 1-0719.20) requires RFP files clearly document the process to award a contract. Specifically, this policy recommends agencies maintain documentation supporting the determination of award detailing the basis on which the award was made. Finally, the Department of Corrections Delegation of Authority Agreement from the Department of Administration requires the department "maintain adequate records to document the procurement process." The department's internal control policies also require controls be in place to ensure the department's resources are protected and risk to the department is minimized.

Department Policy Does Not Address Required Documentation

While statute and state policy specify the RFP process will be documented to support contract award decisions, they do not provide specific details on the extent of documentation that should be maintained. During interviews with department staff and our review of policies, we found no agency policies and procedures exist that specify the kinds and extent of documentation that should be maintained. Specific guidance on how the department's RFP process is to be documented should be outlined in department policies and procedures. This would help ensure transparency and accountability within the RFP process.

RECOMMENDATION #3

We recommend the Department of Corrections comply with the Montana Procurement Act by:

- A. Developing and following a policy that ensures fair and equitable treatment of all vendors during procurement.*
 - B. Developing and following a policy to demonstrate the basis upon which procurement awards are made.*
-

RFP Evaluation Committee Membership

RFPs are typically evaluated by a group of individuals who are sufficiently knowledgeable about a proposed project yet free of conflicts of interest. In order to obtain the knowledge of subject matter experts, the department has allowed an employee of a vendor that is a competitor for department services to serve on one of its RFP evaluation committees. For example, an employee of a vendor who supplies PRC services and potential competitor on future PRC or treatment program RFPs served on an evaluation committee to score PRC proposals.

Competition for facility contracts is generally limited and by statute some facilities, such as PRCs, must be operated by Montana nonprofit corporations. Of the six RFPs we reviewed, one attracted four responses while each of the others generated at most two offers per facility. Two RFPs attracted only one responsive proposal. Since there is a small pool of potential service providers for services like PRCs, using providers who may compete against one another does not convey a good perception to the public regarding the fairness of the department's process. This practice also increases the risk of inappropriate activities occurring in the department's contract award process.

There is a perception among vendors that the department's procurement process is not always fair or very well organized. For example, some vendors stated they did not believe scoring criteria was always clear and at times it appeared RFPs were scored by individuals who did not receive sufficient instruction. Comments made by a vendor during one RFP process indicated the process was "wrought with problems" and another RFP was formally protested by a vendor.

When procuring goods and services for public entities, even the perception that there is a potential conflict should be avoided. According to the department purchasing manual and Department of Administration guidance, evaluation committee selection,

“should be guided by the principle of trying to avoid any potential appearance of conflict of interest.”

Serving on an evaluation committee is an intensive time commitment, but there are other places the department could go to obtain similar levels of subject matter expertise. For example, potential sources of expertise could be obtained from state or local law enforcement or other state government agencies, such as the Department of Public Health and Human Services, which uses some similar types of services as the Department of Corrections.

During interviews with department staff and our review of policies, we found no agency policies and procedures exist that provide guidance related to evaluation committee composition. Specific guidance should be outlined in department policies and procedures. This would help ensure transparency and accountability within the RFP process. A written policy that specifies the composition of evaluation committees could help the department avoid the appearance of inappropriate behavior.

RECOMMENDATION #4

We recommend the Department of Corrections develop a policy to assure selection and composition of request for proposal evaluation committees avoids potential conflicts of interest.

Some Services Performed Without Written Contract

The department purchasing manual states, “the only method of contracting with the department is by written agreement.” We identified instances in which the department has obtained services from vendors without executing a written contract. One vendor provides inmate transportation services while another vendor operates a drug and alcohol treatment center and a sanction and assessment facility. Both vendors have been providing these services for more than two years without a signed, written contract. Similar issues have been identified in other Legislative Audit Division audits of the department dating back to 2000.

Inmate Transportation Agreement

One of the vendors who responded to the meth treatment RFP included in its proposal an offer to provide transportation services outside the scope of what was requested. The department did not consider these services as part of the RFP evaluation but believed that such services could potentially benefit the department. So, the department

entered into a verbal agreement with the vendor for the services. The department did not conduct a competitive procurement process, nor did it execute a written contract for these services. The department pays the vendor \$54,000 annually. According to the vendor and to department staff, the vendor transfers inmates between a variety of state-owned and contracted correctional facilities. Without a written contract, it is unclear what each party's responsibilities are and the state is not able to minimize its liability for the actions of the vendor. Our review of invoices for these services did not indicate the volume of transportation services that have been provided.

Drug and Alcohol Treatment Center and Assessment and Sanction Facility

In late 2006, the department identified a need for additional drug and alcohol treatment beds and for a secure assessment and sanction center. According to department records, the services have been in place since approximately March 2007. To obtain these services, it sought to expand the contract of an existing PRC, but no signed written contract for the new services yet exists. Several draft contracts have been passed back and forth between the department and the vendor but as of January 2010, no version had been approved by both parties. The vendor provides 50 beds within its assessment and sanction center program and an additional 40 beds in its chemical dependency treatment facility. In its 2009 biennial report, the department indicates the annual cost of these programs combined is over \$1.6 million.

Lack of Written Contracts Increases Risk to State

In both of the cases above, it is not clear what the responsibilities of the contractor and the department are, nor if the contractor has obtained adequate insurance coverage. Without written contracts the state lacks the ability to determine if services provided are those requested or that important safeguards to limit state liability exist. There is also no assurance that all parties clearly understand expectations. In addition, since the department did not use a competitive procedure to obtain the services, there is no assurance that the state is receiving the best available services.

There are a number of provisions which, by statute, must be included in any contract with the state. In the absence of a written contract, the following provisions cannot be met:

- ♦ The Legislative Audit Division must have access to records of contracting entities (§18-1-118, MCA).
- ♦ A contract may not be transferred, assigned, or subcontracted without the express written approval of the state (§18-4-141, MCA).
- ♦ If funds are not appropriated or otherwise made available to support continuation of a contract, the contract must be canceled (§18-4-313(4), MCA).

- ♦ The venue for disputes arising over state contracts must be the district courts of Montana (§18-1-401, MCA).
- ♦ Contracts must contain a provision that hiring must be on the basis of merit and qualifications and there may not be discrimination (§49-3-207, MCA).

Accounts among department staff differ as to why there has never been an executed written contract in these particular instances, but it is clear that the department should complete written agreements as soon as possible. If similar services are still desired by the department at the end of the terms of these newly written contracts, the department should seek offers from all interested vendors through a competitive process.

RECOMMENDATION #5

We recommend the Department of Corrections ensure all contracts are executed in writing.

Chapter IV – Contract Monitoring

Introduction

The Department of Corrections (department) contracts for a wide variety of goods and services. Some contracts, such as private secure facilities, require frequent monitoring to ensure vendors meet contract terms due to public safety concerns and the high dollar value of such contracts. Others, such as property leases, do not require frequent formal monitoring because many staff members regularly observe the property and changes are relatively rare. However, all contracts require some degree of monitoring to ensure that the good or service procured by the state is delivered as intended.

This chapter discusses improvements over the department's controls related to contract monitoring. It addresses several areas where the department can improve how it monitors contracts for both community correctional facilities and other miscellaneous department contracts. Areas discussed include improving Compliance Monitoring Unit (CMU) compliance reviews, developing a comprehensive monitoring process for contracted community corrections facilities, and improving monitoring procedures for the department's miscellaneous contracts.

What is Contract Monitoring?

Contract monitoring is a process of evaluating vendor performance against the terms and conditions of a contract with the state. Monitoring is important to identify and resolve problems, assure that required deliverables are received, and financial documentation is accurate. When monitoring is performed, department staff can make observations and collect data on whether the contract is meeting the needs of the state.

Examples of facility contract monitoring may include verifying receipt of required reports counseling services were provided, or the number of inmate bed days billed by the contractor matches the number of actual inmates at the facility. Monitoring of a property lease contract may consist of a simple log of problems which required a service call or verification that janitorial services are regularly provided.

Facility Contract Monitoring

Regional and private prisons are regularly monitored by the Contract Placement Bureau (CPB) located within Montana State Prison. The other contracted department facilities are monitored by staff members within the Adult Community Corrections Division (ACCD). All facilities are also subject to periodic compliance reviews led by the department's CMU. The level of monitoring activity varies widely.

Contract Placement Bureau Has Good Process to Monitor Secure Facilities

The Contract Placement Bureau was developed in the mid 1990s when privatization of secure facilities first began in Montana. As the state was new to the idea of private facilities, some degree of “learning on the fly” was required. Over time bureau staff have developed tools for use in both regular ongoing monitoring by an individual staff member and for in-depth facility audits by a team of monitors.

Each regional and private prison is a secure facility with a full-time on-site monitor who observes and documents activities at the facility, including spot checks on weekends and evenings. The monitors file monthly reports regarding their observations. Monitors observe all contractual functions of the facilities including things such as building maintenance, staffing levels, food service, medical services, offender segregation, and grievances. Monthly reports are filed by contract monitors at each facility and distributed to the facility warden or county sheriff and staff at the bureau. Reports reference the contractor’s performance with respect to contract terms and department policy. The CPB has also developed tools to conduct regular periodic audits of the private and regional facilities. The bureau works with the CMU to perform annual audits of the private prison and biannual audits of regional prisons.

In concert, the ongoing monitoring and full audits provide the CPB with the information necessary to assess the performance of each contractor and a mechanism to alert the department of potential problems. Overall, the CPB has an impressive monitoring system in place. A full-time on-site contract monitor may not be feasible or necessary for all contracted facilities, but transferable benefits of the CPB monitoring process include:

- ♦ Occasional spot checks of contractor compliance
- ♦ Development of standardized tools for testing performance
- ♦ Regularly documenting observations and making recommendations for improvement.

CONCLUSION

Regional and private prisons receive regular, documented monitoring, which provides assurance that contractors meet the terms and conditions contained in their contracts.

Compliance Monitoring Unit Tools Require Update

The CMU is part of the Health, Planning and Information Services Division. Per department policy, the CMU is meant to conduct compliance reviews of all department-managed and contracted facilities at least once every three years. CMU facility reviews are designed to measure compliance with department policies and contract terms. Compliance reviews are conducted by a team of department personnel, usually including specialists in several areas such as security, medical treatment, probation and parole, and the assigned contract monitor. The CMU is directed by department policy to collect, organize, and interpret data to measure operational efficiency and effectiveness of each facility. CMU compliance provides assistance to department staff in monitoring contracts for contracted facilities.

The CMU has the potential to provide valuable information related to contract monitoring and reviewing compliance with contract terms. However, audit work identified improvements could be made in how the CMU is used for contract monitoring activities. We found compliance reviews have not been conducted on all contracted facilities. For example, contracted treatment facilities have never been through a CMU review. According to department officials, unit staffing levels have contributed to this issue. However, there are also other reasons the CMU has been limited in its effectiveness regarding contract compliance review activities.

Ineffective Monitoring Tools and Limited Communication

The CMU currently uses a monitoring tool to conduct compliance reviews of contracted facilities. Monitoring tools are used to assess facility compliance with department policies and document facility operational procedures and contractual obligations. Audit work noted the CMU uses a standardized set of monitoring tools to conduct reviews of all contracted facilities. However, the design of the current monitoring tool is geared towards reviews of secured facilities, such as contracted prisons, as opposed to other types of contracted facilities such as prerelease centers or treatment facilities. Consequently, the monitoring tools currently used may be limiting the effectiveness of CMU reviews and impacting whether some facilities get reviewed.

Audit work also noted there is limited communications between CMU staff, department contract liaisons, and contracted facilities regarding CMU compliance reviews. Interviews with CMU staff, contract managers for contracted facilities, and officials for contracted facilities found the results of compliance reviews are not shared among all parties. Consequently, contracted facilities and contract liaisons are not always aware of the results of CMU compliance reviews related to facility compliance with department policies or contractual requirements. Department policy currently requires compliance review results be provided to the department director and the

corresponding division administrator. However, policy does not require results be provided to the contract liaison of the contracted facility which was reviewed.

The monitoring tools currently used by the CMU to conduct compliance reviews should be revised. The tools were originally designed to focus on start-up phases of secure facilities—they are not necessarily appropriate for evaluating community facilities or to evaluate the now-mature regional and private prisons. Without appropriate tools, the compliance monitoring process has had limited effectiveness and has not reviewed all facilities every three years as required by department policy. The department should update the CMU monitoring tools to make them appropriate for use in the specific facility to be monitored. Additionally, department policy should be developed which requires results from CMU compliance reviews be provided to the contract liaison for each contracted facility as well as the contracted facility which was reviewed.

RECOMMENDATION #6

We recommend the Department of Corrections:

- A. *Update and revise its compliance monitoring tools to better suit each type of facility to be monitored.*
 - B. *Require results of Compliance Monitoring Unit compliance reviews be shared with the appropriate contract liaison and reviewed contracted facility.*
-

Community Correctional Facility Monitoring

Within ACCD there are three positions responsible for routine monitoring of contracted facilities. One position focuses on prerelease centers (PRC) while the other two handle treatment centers. The staff members in these positions regularly review reports submitted by vendors. One position is located at the contracted facility while the other two are located in Helena and occasionally perform site visits at each facility. Site visits are said to include observation of all aspects of a vendor's work through direct experience and interviews with vendor staff and offenders. Site visits are typically informal and documentation of the results generally does not exist.

Without documentation, the evaluation of a contractor's compliance with contract terms is not available to anyone other than the person who conducted the site visit. In addition, details regarding contractor performance are often forgotten over time because documentation often does not exist. Due to department staff turnover and new staff being hired, these situations have been problematic for the department

in effectively monitoring contracts for facilities such as PRCs, treatment programs, and assessment and sanction centers. Additionally, since there is no policy regarding the frequency for site visits or which contract terms should be reviewed, there is no assurance that vendors are meeting important terms and conditions. For example, during the course of our audit work, we noted:

- ♦ A PRC contractor asked what the department would do in the event of an emergency work stoppage. As part of the contract, a plan for this kind of event is required but neither the contractor nor the department appeared to know if a plan was in fact in place.
- ♦ Verbal agreements were made allowing changes to the terms of a contract such as the periodicity of delivery for certain reports or the terms of payment for medical services. The changes appeared reasonable but lacked written documentation indicating department and vendor agreement and what changes were agreed upon.
- ♦ Numerous contract terms were said to have been observed by a contract monitor but no documentation was available to confirm to others that contract terms were met.

One ACCD objective is to “require that all programs under contract with the division have an effective means of measuring performance.” However, without sufficient documentation supporting contract monitoring activities, it is not possible to say whether PRC and treatment facility contractors are meeting the terms and conditions of their contracts, if contract modifications are supported, or if contracts renewals are justified. State policy (MOM 1-0726.00) indicates state agencies need to emphasize contract monitoring and monitor contract performance on a “day-to-day basis.” In addition, this policy also indicates contract modifications and other contract monitoring activities be well documented.

Facility Monitoring Elsewhere

The federal Bureau of Prisons (BOP) contracts with three of the PRC facilities in Montana to house federal prisoners for re-entry into communities. The services provided via these contracts are very similar to those provided for department inmates. Federal inmates compose a small minority of the population at the PRC facilities; however, the BOP conducts a minimum of three monitoring sessions annually. Two sessions are unannounced, but may be conducted without a site visit. The other session is a full site visit. Following each monitoring session, BOP provides the contractor with a written evaluation. After a full monitoring, there is a close-out meeting to go over the report, which may include training for the contractor on how to better meet contract terms. The BOP conducts a quarterly audit of its own files to ensure all documentation is on hand. A single BOP employee is responsible for monitoring ten facilities in the three state region that includes Montana.

Other Montana agencies have developed formal procedures to monitor facility contracts. These monitoring efforts help provide assurance that contractors provide services as intended. For example the Department of Public Health and Human Services monitors a facility in eastern Montana. The contract monitor compiles quarterly reports that reflect contractor performance. In addition, there are three annual “surveys” of the facility completed by different agencies. The findings of these surveys are placed in a public viewing area in the facility and one is available for public viewing online.

Improvements to Community Facility Monitoring Would Increase Sharing of Information

The department has placed limited emphasis on formally monitoring PRC and treatment facility contracts. Despite the department having contract liaisons for its PRC’s, treatment programs, and assessment and sanction centers, the department takes an informal approach in monitoring these contracts. Little emphasis has been placed on establishing formalized and comprehensive contract monitoring process for any of these programs. There are also currently no specific policies or procedures in place which require the contracts be monitored, the procedures that should be followed to ensure contracts are monitored appropriately, or a formal tool such a checklist to tell monitors how and what activities should be documented. The department should develop a tool for use in monitoring community corrections facilities and adopt a policy regarding how often it is to be used. By doing so, the department will be better able to assess contractor performance and ensure contact monitoring continuity in the event of contract liaison turnover.

RECOMMENDATION #7

We recommend that the Department of Corrections develop a comprehensive contract monitoring process for community corrections facilities by:

- A. *Developing tools for use by facility contract monitors that will promote the evaluation and documentation of contractor performance.*
 - B. *Adopting a policy regarding the frequency of facility monitoring activities.*
-

Monitoring of Miscellaneous Contracts Is Informal

State policy (MOM 1-0726.10) encourages agencies to develop a process to evaluate contractor performance and incorporate this process into their contract management procedures. The department has approximately \$19 million in what we have termed

“miscellaneous” contracts. This includes contracts for services such as mental health and chemical dependency counselors, legal services, education assistance, building leases, and building security systems. As described earlier, these contracts are monitored by department employees called contract liaisons. Audit work found the department’s contract liaisons generally do not actively monitor contracts. We reviewed 24 miscellaneous department contracts and nearly all were being monitored on an informal basis with little documentation supporting monitoring activities.

Contract Monitoring in Other States

We interviewed employees of the departments of corrections in Utah and Idaho to learn how those agencies monitor contracts. Each state has implemented procedures which result in regular monitoring and thorough documentation regarding contract management. For example, the Utah Department of Corrections is beginning an annual contract review process that requires regular contact with a vendor, including monthly documentation of contractor performance. Contract monitors use monitoring checklists and deliver quarterly performance reports to department management. Idaho Department of Corrections officials also indicated contract monitors conduct on-site observations and record their observations on a monitoring form. This information is evaluated by the contract monitors and by management for trends or other indication the contractor is not meeting the terms of the contract. If it appears a contractor is not meeting the terms of a contract, the information is referred to the internal auditor and an audit of the contractor will be conducted.

Evaluation of Contractor Performance Proves Beneficial

When Montana Department of Corrections contract liaisons have taken the time to evaluate and document contractor performance, it has proven beneficial. For example, a contract liaison at the Montana State Prison analyzed the performance of four contractors who were performing essentially similar services. The liaison was able to use the results of this effort to make a decision to not renew the contract of one of the four vendors and modify the workload of the others. Another liaison was experiencing problems with a contractor fraternizing with an inmate. The liaison documented the instances when this occurred and the conversations held with the contractor. Eventually, the problem became so severe that the liaison was compelled to terminate the contract and was able to use the documentation as evidence of the contractor’s performance.

Recent Improvements Should Be Better Supported Through Contract Monitoring

Beginning in 2009, the Contract Management Bureau requested that all contract liaisons submit a quarterly report regarding the activity of each miscellaneous contract.

The reports include a summary of payments made to each contractor—which addresses a finding in a previous Legislative Audit Division financial-compliance audit—and includes an area to answer several questions related to contractor performance. The information is designed to help the department make decisions regarding contracts and keep track of contractor activity. As discussed earlier, nearly all miscellaneous contracts reviewed as part of audit work contained little documentation indicating these contracts were actively monitored. In addition, interviews with contract liaisons found most were performing limited contract monitoring duties. The department's new reporting process has potential to be useful in assisting department management in better tracking activities and compliance with miscellaneous contracts. However, these reports will only be useful to the department if information provided is supported through documented contract monitoring activities.

Contractor Evaluations Important at Renewal Time

Audit work noted the department generally renews and amends miscellaneous contracts with limited information documenting whether contractors provided services which complied with the contract, met the needs of the department, or any formal assessment on the contractor's overall performance. Administrative rule (ARM 2.5.304) suggests contract renewals contain a justification that outlines the basis for renewal. This requires an agency to consider if a contract is really necessary rather than “rubber-stamping” a new version. Instituting a similar justification process would help ensure department contracts are valuable.

A few examples identified during the audit on miscellaneous contract changes which occurred with little or no documentation regarding performance are provided below:

- ♦ The department recently approved a \$10 per hour compensation increase to a contractor that provides counseling services.
- ♦ The compensation for a mental health services contract was increased by \$13,000 per year.
- ♦ A \$28,600 annual increase for behavioral therapy service contract was approved.

A lack of a formal process to evaluate contractor performance increases the department's risk of using substandard providers to provide needed services. It also does not provide a process to identify potential changes that may be needed in a contract which could improve department services.

Department Lacks Policy to Document Contractor Performance and Justify Renewals

The department does not have policy and procedure which requires formal evaluations of contractors or how evaluations should be documented. Reviews of miscellaneous contracts and interviews with contract liaisons noted that contract monitoring activities to ensure compliance with contract terms are often not done or done on an informal basis. Consequently, there is a general lack of documentation that would support a formal evaluation of contractor performance if they were completed.

The quarterly reporting process has the potential to help strengthen contract management. The department needs to define its expectations related to its staff's contract monitoring activities in department policies and procedures. This should include defining the types of monitoring activities that should take place, how often these activities should occur, and how monitoring activities should be documented. The department should also develop policies and procedures requiring formal evaluations of contractor performance prior to renegotiating or renewing contracts and evaluations should be supported with documentation compiled through formal contract monitoring activities. Department staff, including contract liaisons, indicated better monitoring and evaluations of contractors could improve the department's contract management process.

RECOMMENDATION #8

We recommend the Department of Corrections improve monitoring of miscellaneous contracts by developing policies and procedures which:

- A. *Define expectations related to contract monitoring activities including types of monitoring activities to be conducted, frequency of monitoring, and how contract monitoring activities should be documented.*
 - B. *Require formal evaluations of contractor performance prior to renegotiating or renewing contracts which are supported with documentation compiled through formal contract monitoring activities.*
-

Chapter V – Organizational Structure Changes Could Improve Contract Management

Introduction

The Department of Corrections (department) currently has over 230 contracts with a total annual contract value of over \$74 million dollars. For fiscal year 2010, contracted services will make up more than 40 percent of the department's total budget. Given the extent the department relies on contracted services, it is important the department have an organizational structure which promotes effective contract management and ensures accountability of its contracting activities. However, we noted the current organizational structure is a contributing cause to many of the department's ongoing weaknesses related to contract management – including those identified during this audit. This chapter addresses the department's organizational structure as it pertains to contract management and improvements which can be made. These issues are discussed in the following sections.

No One Entity Responsible for Managing Contracts

The department uses a decentralized approach to conduct many of its contract management activities. Nearly every division within the department, including the Montana State Prison and Montana Women's Prison, has contracts with vendors to provide needed services. It is department staff (contract liaisons) located in each division, in regional offices, or at the prisons who are responsible for managing these contracts. The responsibilities of contract liaisons include being the primary contact for contractors, determining necessary contract changes, ensuring compliance with contract terms, and negotiating contract terms, scope of services and compensation paid to contractors. There are approximately 50 department employees currently managing contracts both in Helena and in the field. In addition, several other department programs play a key role in managing the department's contracts including the Contract Management Bureau, Compliance Monitoring Unit, Contract Placement Bureau, and Legal Services. Our audit work found there is no one component within the department with explicit responsibility for managing the department's contracts. Since contract management activities are spread throughout the agency, there is no clearly defined line of authority or responsibility over the department's contracting activities.

Other States Have Centralized Contract Management

Audit work noted other states have been moving to more centralized contract management processes rather than a decentralized approach. This places more emphasis

on the importance of following proper contracting practices. For example, officials from the North Dakota Department of Corrections and Rehabilitation indicated they centralized their contracting process to ensure compliance with state procurement laws and obtain good value in contracts. In a similar move, the Utah Department of Corrections also made a decision to centralize its contracting activities to help improve how the department manages its contracts. These included enhancing areas such as coordinating and tracking contracts and making contracting activities more consistent and standardized to better ensure compliance with applicable laws, guidelines and regulations.

Federal Agencies Contract Management

Managing contracts is a specialized skill that requires a significant amount of training. For example, the federal Office of Management and Budget requires a minimum of 40 hours of training, with subsequent training requirements after that, for individuals responsible for managing federal contracts. Federal government agencies use centralized contracting activities located in contract administration offices. Contracting officers located within these offices are the only employees authorized to enter federal government agencies into contracts. A contracting officer relies on specifically assigned employees located in the field to observe vendors and provide information on whether contractors are meeting contract terms or to answer questions regarding contract requirements. However, field personnel do not have authority to enter into contracts or to negotiate, change, renew or make any other modifications to a contract. This can only be done by the assigned contracting officer.

CONCLUSION

Other states corrections departments and federal agencies are using centralized contract management processes.

Contract Management Bureau Not Always Involved

Since the department has a decentralized organization, the department places responsibility with field staff to determine when contracted goods or services are needed. However, once the need is identified, department policies and procedures require staff to route requested contracts through the Contract Management Bureau. The department has established procedures for routing contracts over \$5,000 to ensure agreements receive appropriate review prior to execution. As part of this routing process, required documentation such as proof of insurance or professional licensure is also obtained to ensure that the vendor is qualified and is covered by adequate insurance protection. Contracts must be routed through the Contract Management Bureau so it has a record of the contract and can determine when contracts need to be renewed and update insurance documents.

During audit work, we identified examples of contracts that were executed by department staff but did not follow the established contract routing procedures. Most often, these contracts were signed by a single individual without evidence that any part of the regular routing and approval process was followed. Examples include:

- ◆ Two contracts for outside legal representation with a total contract value of \$10,000 each
- ◆ Another contract for outside legal representation to be billed at \$150/hour with no contract maximum
- ◆ One contract for \$16,000 worth of interpretation services for hearing impaired inmates
- ◆ An agreement to pay \$20,000 to a county government for telecommunications services

Appropriateness of Other Contracts Questioned

We also questioned the appropriateness of other department contracting activities we reviewed. For example, a contract liaison was assigned to a contract in which the liaison's spouse was the vendor. Consequently, the contract liaison was responsible for monitoring contracted services provided by an immediate family member. This contract called for approximately \$9,400 to provide six hours of weekly chemical dependency counseling services to offenders. In another example, the department approved a \$10,646 contract with a provider located in the state of Utah to provide maintenance for a security system at the Montana Women's Prison. The department did not obtain competitive bids for the service and the contract authorized advanced payment of the full \$10,646 before services were provided.

The department's decentralized approach to contract management has been a contributing cause for the issues discussed above and for many of the issues addressed in previous chapters. This has resulted in staff with little or no contract management experience who are responsible for managing contracts. In addition, there are no clearly defined expectations for staff to perform contract liaison duties. Other than for the prerelease center and treatment facility contract managers, employee position descriptions generally do not provide any expectations that employees must perform contract liaison duties. Interviews with department managers and contract liaisons noted contract management is not a priority when considered with the other duties for employees. As a result, department employees and their supervisors stated contract management is not necessarily an important part of their overall job responsibilities. Therefore, limited emphasis has been placed on these duties and there is an appearance that there is no one in charge of the department's contract management activities.

CONCLUSION

The Department of Correction's decentralized contract management approach has contributed to many of the department's contract management difficulties.

The Importance of the Contract Management Bureau's Role Not Emphasized

While several programs in the department play a role in managing contracts, audit work suggests much of the contracting capability and responsibility lies with the Contract Management Bureau. For example, department policy indicates the Contract Management Bureau should administer all contracts valued over \$5,000 “to facilitate an effective contract management process intended to minimize risk and liability and maximize efficiency.” However, this audit report identified a number of weakness related to the department's contract management activities. The department has not emphasized the importance of the Contract Management Bureau's role in managing department contracts. This lack of emphasis has led to many of the issues identified in this report. Department staff do not see the Contract Management Bureau or contract management activities as an important part of the department's mission. The current organizational structure does not place the bureau in a position where it can play a strong role in managing the department's contracts.

The Contract Management Bureau is part of the department's Administrative and Financial Services Division. However, changes related to the organizational placement and employee composition of the bureau could improve the effectiveness of the department's contract management process. For example:

- ♦ Elevating the Contract Management Bureau within the department's organizational structure to have a direct line of communication with the department director could raise the level of importance and increase the visibility of the bureau's contract management role. This could also provide for improved communication and coordination with department management regarding contracting activities and more efficiently address problems when they arise.
- ♦ The department could make the bureau the responsible entity for executing all department contracts and overseeing all contract monitoring activities. Other department staff could still be used to determine when contract services are needed and verify/report to the Contract Management Bureau that contracted services were provided as required. However, procurement of contracted services and contract monitoring would be the responsibility of the bureau.
- ♦ There are two contract managers located within the Adult and Community Corrections Division in Helena, one for prerelease centers and one for

treatment programs. The majority of duties for these staff are related to monitoring contracts for prerelease centers and treatment programs. These positions would likely be a more appropriate fit in the Contract Management Bureau.

- ♦ The Compliance Monitoring Unit is currently located within the department's Health, Planning, and Information Services Division. This unit is meant to conduct compliance reviews of all department-managed and contracted facilities at least once every three years. Therefore, it appears the duties of this unit would be more appropriately located within Contract Management Bureau.

Realigning the duties and responsibilities of the Contract Management Bureau should be a consideration to help improve how the department manages its contracts. Making changes such as those suggested above could help improve communication within the department regarding contracting activities. It would also centralize major contract management activities, such as procurement of services and contract monitoring. The department should formally re-evaluate its existing organizational structure related to how it manages contracts. This should include centralizing contract management activities to strengthen oversight of contracts. Making these kinds of changes could provide an effective means to address problem areas related to contract management, such as those discussed throughout this report.

RECOMMENDATION #9

We recommend the Department of Corrections:

- A. *Re-evaluate its existing contract management structure.*
 - B. *Make changes to centralize and strengthen contract management activities.*
-

DEPARTMENT OF
CORRECTIONS

DEPARTMENT RESPONSE

DEPARTMENT OF CORRECTIONS

A-1



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LEGISLATIVE AUDIT DIV.

Re: Response to Legislative Audit Recommendations

Dear Ms. Hunthausen:

Thank you for the opportunity to respond to the contract performance audit report for the Department of Corrections. We have reviewed the recommendations contained in the report and our responses are as follows:

RECOMMENDATION #1:

We recommend the Department of Corrections comply with state law when entering into contracts for new facilities by:

- A. Contracting with Montana non-profit corporations for prelease centers as required in 53-1-203, MCA, and
- B. Procuring all facilities according to the provisions of the Montana Procurement Act when Title 53, MCA is silent.

Response:

Partially concur. The department will continue to comply with state laws when entering into contracts for new programs. In regard to (A), the department will review statutes to develop recommended changes that clarify the department's ability to contract with local governments for prerelease center services. In regard to (B), the department agrees that Title 53 is silent on expansion of existing programs. However, the department believes that Montana Procurement Act does not clearly address expansion of programs through contract amendment as occurred in three instances addressed by the auditors. Therefore, the department will review statutes to develop recommended changes that provide the department with more guidance on when the competitive procurement process applies to expansion of programs through contract amendment.

RECOMMENDATION #2:

We recommend the Department of Corrections amend ARM 20.7.501-511 to clarify the order in which prerelease center site approval and procurement steps are to be completed.

Response:

Concur. The department will propose language changes to ARM 20.7.501-511.

RECOMMENDATION #3:

We recommend the Department of Corrections comply with the Montana Procurement Act by:

- A. Developing and following a policy that ensures fair and equitable treatment of all vendors during procurement, and
- B. Developing and following a policy to demonstrate the basis upon which procurement awards are made.

Response:

Concur. The department will develop new policy or revise existing policy to ensure fair and equitable treatment of vendors in the procurement process and to specify the basis for procurement awards.

RECOMMENDATION #4:

We recommend the Department of Corrections develop a policy addressing the selection and composition of RFP evaluation committees which emphasizes the importance of avoiding potential conflicts of interest.

Response:

Concur. The department's standard business practice is to follow Department of Administration protocol by having all RFP evaluation committee members sign a no-conflict-of-interest form. However, the department will develop a new policy or revise existing policy to formally address the selection and composition of RFP response evaluation committees.

RECOMMENDATION #5:

We recommend the Department of Corrections comply with State Law by ensuring all contracts are executed in writing.

Response:

Concur. The department will execute all contracts in writing.

RECOMMENDATION #6:

We recommend the Department of Corrections:

- A. Update and revise its compliance monitoring tools to better suit each type of facility to be monitored, and;
- B. Establish policy required results of CMU compliance reviews be shared with the appropriate contract liaison and reviewed by contracted facility.

Response:

Concur. The department will update compliance monitoring tools so they are specific to the type of facility being monitored and will develop new policy or revise existing policy to mandate results of compliance reviews are shared with appropriate contract liaisons and reviewed by the pertinent contracted facility.

RECOMMENDATION #7:

We recommend that the Department of Corrections develop a comprehensive contract monitoring process for community corrections facilities by:

- A. Develop tools for use by facility contract managers that will promote the evaluation and documentation of contractor performance, and;
- B. Adopting a policy regarding the frequency of facility monitoring activities.

Response:

Concur. The Adult Community Corrections Division will work with the Contract Placement Bureau to adapt existing monitoring tools that promote evaluation and documentation of contractor performance for use by community corrections facility contract managers. The division and bureau will collaborate in developing a new policy or revising existing policy to address frequency of facility monitoring.

RECOMMENDATION #8:

We recommend the Department of Corrections improve monitoring of miscellaneous contracts by developing policies and procedures which:

- A. Define expectations related to contract monitoring activities including types of monitoring activities to be conducted, frequency of monitoring, and how contract monitoring activities should be documented.
- B. Require formal evaluations of contractor performance prior to renegotiating or renewing contracts which are supported with documentation compiled through formal contract monitoring activities.

Response:

Concur. The department will develop a new policy or revise existing policy to define expectations related to contract monitoring and to require formal, documented evaluation of contractor performance before renegotiating or renewing contracts.

RECOMMENDATION #9:

- A. Re-evaluate its existing contract management structure; and,
- B. Make changes to centralize and strengthen contract management activities.

Response:

Concur. The department will continue to evaluate the existing contract management structure and make changes to strengthen contract management activities. This process will be a permanent agenda item for meetings of the department's management team and the director will personally hold administrators accountable for actions of their staff responsible for contract management.

We appreciate the legislative staff time devoted to this audit. They were professionals throughout the process and their willingness to assist with any issue was exceptional. We look forward to working with your office in the future.

Sincerely,



Mike Ferriter
Director